

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 53/MP/2012**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

**Shri M. Deena Dayalan, Member**

**Shri A.K. Singhal, Member**

**Date of Hearing: 1.4.2014**

**Date of Order: 1.10.2014**

**In the matter of**

Petition under Section 79(1) (f) of the Electricity Act, 2003 read with Chapter III of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 for recovery of Unscheduled Interchange Charges (UI Charges) in respect of Bhilai Expansion Power Plant (2 x 250 MW) for the period from 22.4.2009 to 31.7.2011

**And in the matter of**

NTPC SAIL Power Company Private Limited

**Petitioner**

**Vs**

Chhattisgarh State Load Despatch Centre

**Respondent**

**Parties Present:**

1. Shri M.G. Ramachandra, Advocate for NSPCL
2. Ms. Poorva Saigal, Advocate for NSPCL
3. Ms. Anushree Bardhan, Advocate for NSPCL
4. Shri S.D. Jha, NSPCL
5. Shri Arvind Jhalani, NSPCL
6. Shri Abhinav Jindal, NSPCL
7. Shri Girish Gupta, CSPTCL

**ORDER**

In the present petition filed under clause (f) of sub-section (1) of Section 79 of the Electricity Act, the petitioner has made the following prayers, namely:



“Hon'ble Commission may be pleased to

(a) Direct the Respondent to adopt the UI accounting methodology in respect of Bhilai Expansion Power Plant (2 X 250 MW) of NSPCL for the period from 22.4.2009 to 31.7.2011 (period for which accounting of NSPCL Bhilai was done by CSLDC, Raipur in line with CERC (Unscheduled Interchange charges and related matters) (Amendment) Regulations, 2010 as the station is an Inter-Sate Generating Station (ISGS)

(b) Direct the Respondent to release the UI amount of ` 1,40,38,899 ( One Crore forty lakh thirty eight thousand eight hundred ninety nine only) along with accrued interest @ 0.04% per day delay w.e.f. 01.08.2011 till the date of disbursement to the Petitioner.

(c) Pass any other order(s) as it may deem fit in the circumstances mentioned above.”

2. The petitioner, NTPC SAIL Power Company Private Limited, a Joint Venture of NTPC Limited and Steel Authority of India Limited (SAIL), was established as a special purpose vehicle mainly to meet the captive power requirements of SAIL. The petitioner took over Captive Power Plants of total capacity of 314 MW from SAIL to meet its captive requirements at Durgapur Steel Plant, Rourkela Steel Plant and Bhilai Steel Plant (BSP). To meet the additional requirement of SAIL, the petitioner established an expansion project at Bhilai by adding 2 x 250 MW units. The first 250 MW unit of Bhilai Expansion Thermal Power Project at Bhilai in the State of Chhattisgarh was declared under commercial operation on 22.4.2009 and the second unit was declared under commercial operation on 21.10.2009.

3. The power generated from the Bhilai Expansion Thermal Power Project (hereinafter "the generating station") is supplied to Bhilai Steel Plant of SAIL (SAIL-BSP), Chhattisgarh State Power Distribution Co. Ltd (CSPDCL) and the Union Territories of Daman & Diu and Dadra & Nagar Haveli. For supply of power to the Union Territories of Daman & Diu and Dadra & Nagar Haveli, the petitioner has obtained long-

term open access (LTOA) on the transmission network of the Central Transmission Utility (CTU) and the generating station is directly connected to the CTU network at Raipur sub-station. The tariff for supply of electricity by the generating station has been determined by this Commission vide order dated 29.7.2010 in Petition No. 308/2009.

4. This Commission in its order dated 7.5.2008 in Petition No. 58/2008 (*suo motu*) issued certain clarifications regarding control areas and also regarding demarcation of responsibility of scheduling between Regional Load Despatch Centres (RLDCs) and State Load Despatch Centres (SLDCs). RLDCs were assigned the responsibility of coordinating scheduling of Ultra Mega Power Projects and other large privately owned power plants of capacity 1000 MW or above in which States other than the host State had substantial permanent share (50 % or more), in addition to coordination of scheduling of Inter-State Generating Stations, commonly called ISGS. The power plants not meeting the above criteria were directed to be scheduled by SLDC of the State in which they were located. These general guidelines were, however, subject to exceptions for reasons of operational expediency, for which the concerned RLDC and SLDC had to mutually agree. The SLDC responsible for coordinating the scheduling of power plant was also made responsible for the following:

- (i) Real-time monitoring of the generating station's operation,
- (ii) Checking that there was no gaming in its availability declaration,
- (iii) Revision of availability declaration and injection schedule,
- (iv) Switching instructions,
- (v) Metering and energy accounting,

- (vi) Issuance of UI accounts,
- (vii) Collections/disbursement of UI payments,
- (viii) Outage planning, etc.

5. In a meeting of the Commercial Committee of WRPC held on 8.8.2008 the responsibility for scheduling of the generating station was assigned to the respondent in accordance with the above guidelines. Accordingly, scheduling, energy accounting including UI accounting of the generating station was being carried out by Chhattisgarh SLDC with effect from 22.4.2009. The Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations 2010 (the Grid Code) came into force with effect from 3.5.2010. In accordance with Regulation 6.4 of the Grid Code, Control Area of the generating station came to be vested in WRLDC. However, jurisdiction was actually transferred to WRLDC w.e.f. 1.8.2011. Presently, WRLDC is entrusted with the responsibility of scheduling power from the generating station and preparing energy account including UI accounts as per relevant provisions of this Commission's regulations.

6. Chhattisgarh State Load Despatch Centre, the respondent herein, was discharging the responsibility of scheduling, energy accounting and UI accounting from 22.4.2009 till 31.7.2011. The grievance of the petitioner is that though it has settled the entire UI charges payable by it to the respondent during the above period, the respondent has not paid UI amount payable to the petitioner despite repeated requests. The petitioner has alleged that a total amount of ₹1.40 crore along with interest thereon became payable by the respondent as tabulated hereunder:

Period	Amount ( ` in crore)
22.4.2009-31.3.2010	Nil
1.4.2010 - 31.3.2011	1.29
1.4.2011 -31.7.2011	0.11
<b>Total</b>	<b>1.40</b>

7. The petitioner has further submitted that the matter of non-payment of the UI dues by the respondent was discussed at the 60<sup>th</sup> Commercial Committee Meeting of WRPC held on 23.12.2011 wherein the following was decided:

*"Committee suggested that the matter requires to be resolved mutually between NSPCL and CSPTCL as the issue applies to period prior to shifting of control area to WRLDC Therefore the Committee requested the above utilities to settle the matter mutually in compliance with the regulatory provisions of CERC and CERC."*

The petitioner is stated to have taken up the matter with the respondent vide its letters dated 5.1.2012, 16.1.2012 and 22.2.2012 but the respondent has not released the payment.

8. The petitioner has submitted that the respondent vide its letter dated 17.2.2012 revised the UI accounts for the period from 22.4.2009 to 31.7.2011. The petitioner has alleged that the respondent while revising the UI accounts under letter dated 17.2.2012 has changed the methodology by considering the petitioner as an "intra-State entity" and has calculated the UI Charges at the rate of 105% (for over-drawals or under generation) and 95% (for under-drawal or over generation) of UI rates in accordance with Regulation 30 (5) of the Central Electricity Regulatory Commission (Connectivity Long Term Access, Medium Term Open Access and related matters) Regulations, 2009 (Connectivity Regulations). The petitioner has submitted that on account of the change

in UI accounting methodology, the petitioner has become liable to pay ₹2,24,80,822/- as UI charges.

9. According to the petitioner, the generating station is an inter-State generating station and is directly connected to the CTU transmission system and therefore, UI accounting of the generating station needs to be done in accordance with Regulation 5 read with the para (2) of Schedule A of Central Electricity Regulatory Commission (Unscheduled Interchange charges and other matters) (Amendment) Regulations, 2010 (UI Regulations).

10. The respondent in its reply filed on 24.5.2012 has submitted that the petitioner obtained LTOA for 170 MW from CTU for sale to the Union Territories of Dadra and Nagar Haveli (100 MW) and Daman and Diu (70 MW) through the transmission system of the CTU. The balance power is supplied within the State to Bhilai Steel Plant of SAIL (280 MW) through a dedicated transmission system owned by the petitioner and to Chhattisgarh State Electricity Distribution Company Ltd (50 MW) through the system of CSPTCL. According to the respondent, for supply of power to Chhattisgarh State Electricity Distribution Company Ltd, the petitioner is connected to the sub-station of Chhattisgarh State Electricity Transmission Company Ltd, (the State Transmission Utility) through a 220 kV transmission line through which the petitioner also draws power for its auxiliary consumption. The respondent has alleged that the petitioner has not made any payments to the respondent on account of Market Operating Charges, System Operating charges and Registration Charges for the period 22.4.2009 to 31.7.2011 when the function of scheduling etc was being done by the respondent.

11. The respondent has further submitted that the petitioner under its letter dated 17.5.2011 had sought certain clarifications regarding operating charges from Chhattisgarh State Electricity Regulatory Commission (CSERC) and by its letter dated 4.8.2011, CSERC has clarified that the petitioner was an intra-State entity. The respondent has submitted that since CSERC has clarified the status of the petitioner as an intra-State entity, as a follow up, all conditions applicable to such class of customers were imposed. Accordingly, clause (5) of Regulation 30 of the Connectivity Regulations was applicable by default which provides that unless specified otherwise by the State Commission concerned, the Unscheduled Interchange Charges for intra-State entity shall be 105% (for over drawal or under generation) and 95% (for under drawal or over generation) of the Unscheduled Interchange rates at the periphery of regional entity. Accordingly, the respondent is stated to have calculated the UI liability of the petitioner from 22.4.2009 to 31.7.2011 which worked out to Rs. 2,24,80,822/-. The respondent has admitted that the issue of revision of UI charges was discussed at the Commercial Committee Meeting of WRPC but has added that the petitioner did not approach it for settlement of the issue as decided at the meeting. The respondent has further submitted that in view of the clarification of CSERC regarding the status of the petitioner as an inter-State entity, adjudication of the dispute is within the jurisdiction of the State Commission.

12. The petitioner in its rejoinder dated 1.6.2012 has submitted that NSPCL-Bhilai Expansion Power Plant is an ISGS directly connected to CTU system through Bhilai-Raipur 400 kV D/C line terminating at CTU's 400 kV sub-station at Raipur (Kumhari) and the Commission has determined the tariff of the generating station. The petitioner

has further submitted that the respondent in its letter dated 18.7.2011 sought clarification of CSERC on certain issues relating to open access and CSERC in its letter dated 5.11.2011 has clarified the issues which inter-alia included clarification regarding the methodology to be followed for UI billing in case of NSPCL-Bhilai. The query of Chief Engineer (LD), SLDC and the reply of CSERC are as under:-

"Issue No. 8- Methodology of UI Billing:-

8.1 Difficulties in UI billing to NSPCL- As per Regulation 20.5 of (Open Access in inter-State transmission) Regulations, 2008 (amended 2009), should NSPCL be treated as intra-State entity or not? And accordingly 95% of the payables-105% or receivables in reference with UI bills should be raised or not?

Commission Reply:-

M/s NSPCL is an inter-State Generating Station and is regulated through the Central Commission's Regulations. If required the matter may be referred to the Central Commission."

The petitioner has submitted that despite getting the clarification vide letter dated 5.11.2011 from CSERC, the respondent has unilaterally revised UI accounting methodology considering the petitioner as an intra-State entity and applied 105% (for over-drawal or under generation) and 95% (for under-drawal and over generation) of UI rate vide letter dated 17.2.2012, disregarding the decision of CSERC. The petitioner has submitted that the respondent has wrongly interpreted CSERC letter dated 4.8.2011 which was issued in the context of applicability of System Operation Charges and Market Operating Charges and Registration Charges for the period 22.4.2009 to 31.7.2011 where the scheduling, energy accounting and UI accounting was carried out by the respondent. As regards the payment of operating charges and registration charges, the petitioner has submitted that it has taken due cognizance of the claim made by the respondent and has vide letters dated 19.9.2011, 5.1.2012, 7.2.2012,



22.2.2012 and 9.4.2012 requested the respondent to adjust the claims out of the UI account payable by the respondent to the petitioner.

13. We heard the learned counsel for the petitioner and the representative of CSPTCL. The parties reiterated their submissions made during the earlier dates of hearing. We have considered the pleadings of the parties, including reply filed on behalf of the respondent and the documents available on record.

14. The first issue for consideration is the issue of jurisdiction of the Commission in this matter. According to the respondent, the petitioner is an intra-State entity and therefore, the jurisdiction to decide the dispute is vested with the State Commission and this Commission does not have the jurisdiction to decide the dispute. We have very carefully considered the objection as to the jurisdiction but we find it to be without merit. The petitioner has claimed that the UI charges are leviable in accordance with the UI Regulations. On the contrary, the respondent has relied upon the Connectivity Regulations to justify levy of the UI charges. Both the parties are justifying their stand on the basis of the interpretation of the regulations notified by this Commission. That being the case, this Commission is the appropriate forum competent to adjudicate the dispute. Moreover, CSERC in its letter dated 5.11.2011 has clarified that the petitioner is an ISGS and is regulated through the regulation of the Central Commission and has advised the respondent to approach the Central Commission, if required. Accordingly, respondent's objection on the issue of jurisdiction cannot be sustained.

15. Coming to the merit of the case, it is noticed that the respondent has revised the UI accounts of the petitioner under clause (5) of Regulation 30 of the Connectivity

Regulations considering the petitioner as an intra-State entity. Clause (5) of Regulation 30 of the inter-State Transmission Regulations provides as under:

"(5) Unless specified otherwise by the concerned State Commission, UI rate for intra-State entity shall be 105% (for over-drawals or under generation) and 95% (for under-drawals or over generation) of UI rate at the periphery of regional entity."

16. It is noted that the period in dispute is from 22.4.2009 to 31.7.2011. The Connectivity Regulations came into force with effect from 1.1.2010 and therefore the period from 1.1.2010 till 31.7.2011 is regulated by the provisions of Connectivity Regulations. Prior to 1.1.2010, the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004 (2004 Open Access Regulations) was governing the long-term and short term open access. Regulation 21 of the 2004 Open Access Regulations provides as under:

"21. (I) The mismatch between the scheduled and the actual drawal at drawal point(s) and scheduled and the actual injection at injection point(s) shall be met from the grid and shall be governed by UI pricing mechanism applicable to the inter-state transactions.

(ii) A separate bill for UI charges shall be issued to the direct customers and in case of the embedded customers, a composite UI bill for the State as a whole shall be issued, the segregation for which shall be done at the State level."

17. The above regulation provides that the mismatch between the schedule and the actual drawal at the point and schedule and actual injection at the injection point shall be met from the grid and shall be governed by UI pricing mechanism applicable to the inter-State transactions. Since the UI Regulations came into force with effect from 1.4.2009, the UI charges for deviation during the period from 22.4.2009 till 31.12.2009 shall be governed by the provisions of Regulation 21 of the 2004 Open Access Regulations read with the relevant provisions of UI Regulations. Regulation 21 of 2014 Open Access Regulations provides for separate bill for direct customer and a composite

bill for embedded customers for which segregation shall be made at the State level. Direct customer has been defined in Regulation 2 (d) "as a person directly connected to the system owned or operated by the Central Transmission Utility". Embedded customer has been defined in Regulation 2(e) "as a person who is not a direct customer". In the present case, the petitioner is directly connected to the network of CTU for 170 MW. Therefore, the billing should be directly done to the petitioner for such 170 MW.

18. Further the station is directly connected to the ISTS for transfer of 170 MW and STU network is not being used. The application of UI Charges @105% and 95% of UI charges under Regulation 30 (5) of the Connectivity Regulations in case of intra-State entity was provided to account for losses in the STU network, if used by the intra-State entity embedded in the State. Since 170 MW is being transferred through ISTS directly, there should not be any question of taking losses into account. Therefore, for the period from 1.1.2010 till 31.7.2011, the petitioner shall be governed by the provisions applicable under UI Regulations. Regulation 30 (5) of the Connectivity Regulations which prescribes the UI rates applicable to intra-State entities would not be applicable in this case. It is pertinent to mention that though the Grid Code came into force on 3.5.2010, shifting of responsibility to WRLDC was delayed as the modalities of transfer were being discussed in various meetings of WRPC. Therefore, the delay is said to be procedural and by operation of law, control area jurisdiction stood vested in WRLDC with effect from 3.5.2010, through the actual transfer took place on 1.8.2011. CSERC has also clarified to the respondent that the petitioner is an inter-State entity in its letter dated 5.11.2011.

20. In the light of the above, we are of the view that the UI accounting in respect of 170 MW of power from 22.4.2009 till 31.7.2011 shall be governed in accordance with 2004 Open Access Regulations and the UI Regulations. The respondent is directed to calculate the UI liability of the petitioner accordingly. Since, the petitioner has written to the respondent to adjust the SLDC operating charges and Registration Charges against the UI charges payable, the respondent is directed to adjust the same while settling the UI accounts with the petitioner.

21. The petition is disposed of in terms of the above.

**sd/-**  
**(A. K. Singhal)**  
**Member**

**sd/-**  
**(M. Deena Dayalan)**  
**Member**

**sd/-**  
**(Gireesh B. Pradhan)**  
**Chairperson**